

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NICOLAS GOUREAU and STEPHANIE :
MENKIN, individually and derivatively on behalf :
of GOOBERRY CORP., a New York corporation, :

Plaintiffs, :

v. :

MARCUS LEMONIS, an individual, ML :
RETAIL, LLC, a Delaware limited liability :
company, and MARCUS LEMONIS, LLC, a :
Delaware limited liability company, :

Defendants, :

and :

GOOBERRY CORP., a New York corporation, :

Nominal Defendant. :

Civil Action No. 1:20-cv-04691

AFFIDAVIT OF GERARD P. FOX

I, Gerard P. Fox, Esq., declare as follows:

1. I am the founding partner and the current managing partner in the law firm of Gerard Fox Law, P.C., in Los Angeles, California. I am counsel of record for Plaintiffs in this case.

2. I am over the age of 18, and I have personal knowledge of the following facts and could competently testify to these facts if called upon to do so.

3. On July 21, 2021, I was contacted by Mr. Douglas B. Wexler, who is known to me as Mr. Lemonis' personal attorney, who has appeared on his behalf and on behalf of his related entities in various litigations relating to CNBC's show *the Profit*, where I have represented parties adverse to Mr. Lemonis and his related entities.

4. Mr. Wexler told me that his client, Mr. Lemonis, on behalf of himself and his related entities, has instructed him to secure a "cease fire in all litigation" arising out of the *Profit*. Attached as **Exhibit A** is a true and correct copy of Mr. Wexler's July 21, 2021 email communication.

5. I remember receiving this communication vividly because I was driving back from a very contentious hearing in a related federal case pending in Pennsylvania, where Mr. Wexler also participated on behalf of Mr. Lemonis and his related entities.

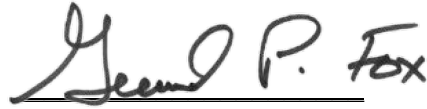
6. I called Mr. Wexler later that day, and he confirmed to me on the phone that Mr. Lemonis wants to stay all pending cases arising from the *Profit*, and in particular all such cases filed by my clients against him and his entities. The **only** exception discussed was a related bankruptcy case in Colorado, which Mr. Wexler doubted could be stayed.

7. The stated reason for Mr. Lemonis' desire to secure these stays was for all the relevant parties to focus on the settlement discussions.

8. Accordingly, for the past several weeks, my office has been working with Mr. Wexler to secure the desired stays. As part of that effort, counsel for Defendants in this case has also been contacted and has been reviewing drafts of proposed stay papers in this case and another case pending in Connecticut federal court.

9. In fact, Mr. Wexler has appeared on behalf of an entity owned by Mr. Lemonis in a related case pending in Illinois state court on August 10, 2021 to secure a stay of that litigation.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 12th day of August 2021 at Los Angeles, California

A handwritten signature in black ink, reading "Gerard P. Fox", is written over a horizontal line.

Gerard P. Fox

EXHIBIT – A –

From: [Marina Bogorad](#)
To: [Dhruv Vyas](#)
Subject: FW: Meet and Confer on Scheduling
Date: Thursday, August 12, 2021 1:48:01 PM

From: Gerard Fox <gfox@gerardfoxlaw.com>
Sent: Thursday, August 12, 2021 1:47 PM
To: Marina Bogorad <mbogorad@gerardfoxlaw.com>

On Jul 21, 2021, at 1:28 PM, Doug Wexler <doug@wexler.law> wrote:

" Warning, External Sender"

Please call me at +13122362139 ASAP as I want to discuss a cease fire in all litigation.

Doug Wexler
Attorney at Law
77 West Wacker Drive Suite 4500